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REPORT SUBMITTED TO THE SECURITY COUNCIL BY THE SECRETARY-GENERAL
IN ACCORDANCE WITH RESOLUTION 799 (1992)

1. On 18 December 1992 the Security Council adopted resolution 799 (1992), which reads as follows:

"The Security Council,

"Recalling the obligations of Member States under the United Nations Charter,

"Reaffirming its resolutions 607 (1988), 608 (1988), 636 (1989), 641 (1989), 681 (1990), 694 (1991) and 726 (1992),

"Having learned with deep concern that Israel, the occupying Power, in contravention of its obligations under the Fourth Geneva Convention of 1949, deported to Lebanon on 17 December 1992, hundreds of Palestinian civilians from the territories occupied by Israel since 1967, including Jerusalem,

"1. Strongly condemns the action taken by Israel, the occupying Power, to deport hundreds of Palestinian civilians, and expresses its firm opposition to any such deportation by Israel;

"2. Reaffirms the applicability of the Fourth Geneva Convention of 12 August 1949 to all the Palestinian territories occupied by Israel since 1967, including Jerusalem, and affirms that deportation of civilians constitutes a contravention of its obligations under the Convention;

"3. Reaffirms also the independence, sovereignty and territorial integrity of Lebanon;

"4. Demands that Israel, the occupying Power, ensure the safe and immediate return to the occupied territories of all those deported;

"5. Requests the Secretary-General to consider dispatching a representative to the area to follow up with the Israeli Government with regard to this serious situation and to report to the Security Council;

"6. Decides to keep the matter actively under review."

2. In pursuance of paragraph 5 of resolution 799 (1992), the Secretary-General telephoned the Minister for Foreign Affairs of Israel, Mr. Shimon Peres, to inform him of his decision to send Under-Secretary-General for Political Affairs, Mr. James O. C. Jonah, to the region. The Secretary-General expressed the hope that it would be possible to achieve a solution in conformity with the position adopted unanimously by the Security Council.

3. Mr. Jonah visited the area from 27 to 30 December 1992. In Israel he held extensive discussions with the Prime Minister, Mr. Yitzhak Rabin, and the Minister for Foreign Affairs, Mr. Shimon Peres. While in Jerusalem, he met with a group of Palestinians, led by Mr. Faisal Husseini, the head of the Palestinian delegation to the peace talks with Israel. In Lebanon, he met the President, Mr. Elias Hrawi, the Prime Minister, Mr. Rafik Hariri, and the Minister of Health and Acting Minister for Foreign Affairs, Mr. Marwan Hamadieh. Mr. Jonah was prevented from meeting with the deportees themselves, but he met with representatives of their families, at the request of the latter. He also met, at their request, with Israeli families who had suffered from acts of terrorism. In addition, Mr. Jonah was briefed during his visit by representatives of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and the United Nations Interim Force in Lebanon (UNIFIL). It should be noted that 16 of the deportees are UNRWA staff members.

4. On 2 January 1993, Mr. Jonah briefed the Secretary-General in Addis Ababa on his discussions in the region, which had been inconclusive because it had not proved possible to persuade the Government of Israel to fulfil its obligations under resolution 799 (1992). The Secretary-General subsequently telephoned Prime Minister Rabin from Addis Ababa to inform him of his intention to send a second mission, led by his Special Political Adviser and Representative to the multilateral peace talks on the Middle East, Under-Secretary-General Chinmaya Gharekhan. This decision was based, he said, on his determination to exert every possible effort to achieve a solution in accordance with the will of the Security Council.

5. On 4 January 1993, the Secretary-General conveyed a letter to the President of the Security Council in which he underlined that an important principle was at stake, namely, that Israel's decision to deport to Lebanon 415 Palestinian civilians was illegal under international law. It was a contravention of Israel's obligations under article 49 of the Fourth Geneva Convention, 1/ and constituted a fundamental disregard of the Universal Declaration of Human Rights. 2/ For its part, the Security Council had repeatedly (in its resolutions 607 (1988), 608 (1988), 636 (1989), 641 (1989), 681 (1990), 694 (1991) and 726 (1992) and most recently in resolution

799 (1992)) expressed its opposition to and condemnation of the deportation of Palestinian civilians from the occupied territories. In his letter, the Secretary-General reported with regret that Mr. Jonah's mission had been unsuccessful and that that was attributable to Israel's unwillingness to comply with resolution 799 (1992). Recalling the unanimous and unequivocal position taken by the Security Council in that resolution, in particular the explicit demand contained in paragraph 4 thereof, the Secretary-General said that in his opinion there was no alternative to the safe and immediate return to the occupied territories of all those deported. He informed the Council that, in view of the gravity of the situation and before presenting a full report, he felt compelled to make a further effort to find a solution in conformity with the terms set out in resolution 799 (1992) and that consequently he had decided to send Mr. Gharekhan to the region to discuss with the Government of Israel ways of bringing an end to the situation. He hoped that the Israeli authorities would recognize the need to comply with resolution 799 (1992); if not, he might have to recommend in his report that the Council consider taking further steps to ensure that its decision was respected.

6. The Secretary-General briefed Mr. Gharekhan in Cairo on 6 January 1993 about his mission, and emphasized that, in his discussions with the Israeli authorities, he should focus solely on implementation of resolution 799 (1992). While the United Nations was concerned over the humanitarian plight of the Palestinian deportees, this aspect had not been addressed by the Security Council. In the circumstances, it seemed appropriate that the International Committee of the Red Cross (ICRC), which under the Fourth Geneva Convention has a special responsibility for civilians residing under occupation, should address the humanitarian needs of the deportees.

7. Mr. Gharekhan visited Israel from 7 to 12 January 1993. He held extensive discussions with the Israeli authorities, including Prime Minister Rabin, with whom he met twice, and Minister for Foreign Affairs Peres. The Prime Minister emphasized that the decision adopted by the Government of Israel on 16 December 1992 "to expel temporarily" 415 Palestinians could not be rescinded. The decision had been taken in the light of a number of acts of violence carried out by supporters of the Hamas and Islamic Jihad movements against Israeli citizens, which had culminated in the kidnapping and subsequent murder of an Israeli border policeman. The Prime Minister noted that the Government had refrained from adopting harsher measures, including capital punishment, which, he pointed out, was permissible under the Fourth Geneva Convention. He mentioned, however, that a number of petitions had been filed with the Israeli High Court of Justice, including one that challenged the legality of the Government's decision which had been adopted on an ad hoc basis and, unlike previous situations in which Israeli deportation orders had been issued to Palestinian residents of the occupied territories, did not stem from the British Mandatory Emergency Regulations of 1945. The Prime Minister stated that, should the High Court rule that the government decision was illegal, the deportees would be returned to "the places from which they had been taken" prior to their expulsion. Otherwise, each expelled individual had the right to appeal. In

the opinion of the Israeli authorities, the expulsion orders were not inconsistent with the position taken by the Security Council. All those expelled would be permitted to return, as requested by the Council; the only difference was regarding the timing. Each deportee had been informed, at the time of his expulsion, of the period that he would have to remain away. Finally, the Prime Minister said that, although the Government of Israel did not wish to enter into a confrontation with the Security Council, it believed that its decision regarding the temporary expulsions was justified, not only on the grounds that it would serve as a deterrent to further acts of violence but also that it would help to sustain the peace process. In the Government's view, Palestinian supporters of the peace process had been intimidated and indeed had their own lives threatened by Hamas and the Islamic Jihad, which were opposed not only to negotiations with Israel but to peace itself. The Prime Minister said that, if the Security Council was to adopt measures against Israel, it might lead to a collapse of the peace process, for which the Council would be held responsible.

8. For his part, Mr. Gharekhan emphasized to his Israeli interlocutors the imperative need for compliance with the decision of the Security Council. He stated that the objective of his mission was to find a solution in accordance with resolution 799 (1992) and that he would not address the humanitarian aspects of the problem. He would not, therefore, travel to Lebanon. He stressed that, if Israel failed to fulfil its obligations under resolution 799 (1992), the Secretary-General would have no choice but to submit an unambiguous report to the Security Council as a follow-up to his 4 January 1993 letter to the President of the Council. Moreover, he firmly rejected the view that the Security Council should be held responsible for a collapse in the Middle East peace process. Should such an eventuality arise, Israel alone would be responsible. In this connection, Mr. Gharekhan conveyed to the Prime Minister a message from the Palestinians he had met the previous evening that they would not resume the peace talks unless the deportees were permitted to return. In response to suggestions that the deportees might be transferred to third countries, Mr. Gharekhan stated that his sole objective was to help to find a solution in strict accordance with the decision of the Security Council, which had demanded the safe and immediate return of the deportees. He noted that it was open to Israel to place the deportees in prison or under administrative detention which, at least, would not be in violation of the Fourth Geneva Convention.

9. During his visit to Jerusalem, Mr. Gharekhan also met, at their request, with a widely representative group of Palestinians, led by Mr. Faisal Husseini. Without exception, the Palestinians expressed opposition to the deportations and called for full implementation of resolution 799 (1992). Unless the deportees were permitted to return, they said, the Palestinian delegation would not resume peace talks with Israel. As indicated above, they requested Mr. Gharekhan to convey this latter message to Prime Minister Rabin. They rejected the Israeli explanation that the deportees had been expelled because of their opposition to the peace process, and expressed apprehension at the precedent set by the ad hoc government decision, which could be applied to any Palestinian civilian in the occupied territories. More generally, the group expressed deep disappointment and

bitterness at Israel's continuing defiance of Security Council resolutions and asked why, in the light of the most recent example of Israeli non-compliance, they should believe that Israel would eventually abide by resolutions 242 (1967) and 338 (1973) on which the peace process was based. Furthermore, it was widely felt that, since the Madrid peace conference, the international community had ignored the right of Palestinians under occupation to safety and protection. Security Council resolution 681 (1990), which inter alia requests the Secretary-General to monitor and observe the situation regarding Palestinian civilians under Israeli occupation, was cited in this connection. Mr. Gharekhan assured the Palestinians that their concerns would be conveyed to the Secretary-General as well as to Israeli leaders with whom he would meet.

10. While his mission did not concern humanitarian matters, Mr. Gharekhan met twice with the head of the ICRC delegation in Tel Aviv, who inter alia briefed him on the 9 January 1993 ICRC visit to the deportees, which had been agreed to by Lebanon and UNIFIL on a one-time basis, as well as by Israel. For this purpose, ICRC had chartered a UNIFIL helicopter, on which United Nations markings were replaced by those of the Red Cross. In the event, the ICRC delegate and medical doctor who conducted the visit had decided, and were given permission by the Israeli authorities, to evacuate two deportees on humanitarian grounds. One, a 16-year-old boy, had been expelled "by mistake", and was permitted to return to his home in the occupied territories. The other was evacuated for medical reasons and, after spending the night of 9 January under ICRC supervision at UNIFIL's hospital in Naqoura, was transferred to Marjayoun Hospital in the Israeli-controlled area (ICA) in southern Lebanon.

11. On 13 January 1993, Mr. Gharekhan briefed the Secretary-General in Paris on his mission.

12. In the meantime, the Secretary-General had a number of meetings and telephone conversations about the deportees with leaders in the region and representatives of other interested Governments. In Geneva he met the Minister for Foreign Affairs of Algeria, Mr. Lakhdar Ibrahimi, the Minister for Foreign Affairs of France, Mr. Roland Dumas, and the Chairman of the Executive Committee of the Palestine Liberation Organization, Mr. Yasser Arafat. In each of these meetings, the situation of the deportees and implementation of resolution 799 (1992) was discussed at length. In Bonn, the Secretary-General addressed the same issues in a meeting with the Minister for Foreign Affairs of Germany, Mr. Klaus Kinkel. In Paris, he again discussed the situation with the Ministers for Foreign Affairs of Algeria and France, as well as the Secretary of State of the United States of America, Mr. Lawrence Eagleburger. During this period, the Secretary-General spoke several times by telephone with the Prime Minister of Lebanon, Mr. Rafik Hariri.

13. On 13 January 1993, the Secretary-General met in Paris with the Minister for Foreign Affairs of Israel. He reiterated to Mr. Peres the need for Israel to comply immediately with the decision of the Security Council. The following day, he spoke twice by telephone with Prime Minister Rabin, and

agreed to send Mr. Gharekhan to Jerusalem again, in a further effort to secure implementation of resolution 799 (1992).

14. On 18 January 1993, Mr. Gharekhan met in Geneva with the President of ICRC, Mr. Cornelio Sommaruga. He conveyed the Secretary-General's appreciation for the humanitarian activities carried out by ICRC with respect to the deportees. Mr. Sommaruga briefed him on further measures contemplated by his organization. In the course of their meeting, Mr. Sommaruga and Mr. Gharekhan noted that the respective responsibilities of the United Nations and ICRC concerning the deportees were separate and different. The mandate of the United Nations was set out in resolution 799 (1992), which demands the "safe and immediate return" of the deportees. The mandate of ICRC was based on humanitarian law and, in particular, the Fourth Geneva Convention, which explicitly opposes deportation. However, in the absence of the return of the deportees, ICRC had a responsibility to ensure that humanitarian assistance, such as relief and medical care, as well as family messages and powers of attorney, was made available to them as long as they were in their present location. Mr. Sommaruga expressed his organization's full support for the efforts of the Secretary-General.

15. Mr. Gharekhan returned to Israel on the evening of 19 January and left early on 22 January 1993. During his stay he met twice with Prime Minister Rabin and once with Minister for Foreign Affairs Peres. A new development since his previous visit was that the Israeli High Court of Justice had, on 17 January 1993, begun its consideration of the appeal which challenged the legality of the Government's action in "temporarily expelling" 415 Palestinians. As at the date of the present report, the Court hearings are continuing. The Prime Minister informed Mr. Gharekhan that he would not be in a position to act, or even to discuss alternative measures, until the Court gave its judgement. Mr. Gharekhan explained to his Israeli interlocutors that the Security Council had acted in the matter independently of the internal judicial processes of Israel. The Prime Minister expressed his understanding of this point, but again emphasized that he could take no action before the Court gave its judgement. He stated that he was prepared to resume discussions with Mr. Gharekhan after the Court had decided.

16. As during his previous visit, Mr. Gharekhan met with a group of Palestinians. The Palestinians expressed support for the efforts of the Secretary-General, and demanded the implementation without delay of resolution 799 (1992). They once again reiterated their position that they could not take part in the peace talks unless the issue of the deportees was resolved.

Observations

17. To recognize fully the gravity of the situation addressed in Security Council resolution 799 (1992), it is important to recall that the deportations carried out by the Government of Israel on 17 December 1992 are only the most recent in a series of violations by Israel of the Fourth Geneva Convention. The question of the safety and protection of Palestinian civilians under

Israeli occupation has repeatedly been addressed by the Security Council since December 1987. For this reason and in the light of requests conveyed by Palestinian leaders to me as well as to Mr. Jonah and Mr. Gharekhan during their missions to the region, I intend to initiate discussions with the Israeli authorities regarding the establishment of a United Nations monitoring mechanism in the occupied territories, as suggested in resolution 681 (1990). This should have the effect of reassuring Palestinians under Israeli occupation that the international community is not neglecting their need for safety and protection, a need which must be met regardless of progress in the peace talks.

18. As has been made clear by the above narrative, Israel continues to refuse to comply with resolution 799 (1992). This is all the more regrettable given that I have, in accordance with the mandate entrusted to me in paragraph 5 of that resolution, made persistent efforts to achieve a solution. I have sent three missions to the region and have personally spoken several times with Israeli Prime Minister Rabin and Minister for Foreign Affairs Peres. The refusal by Israel to ensure the safe and immediate return of deportees as demanded in resolution 799 (1992), in my view, challenges the authority of the Security Council. Additionally, there is a growing perception, throughout the international community, that the Council, by not pressing for Israeli compliance with its resolutions, of which resolution 799 (1992) is only the latest, does not attach equal importance to the implementation of all of its decisions. In these circumstances, I would be failing in my duty if I did not recommend to the Security Council that it should take whatever measures are required to ensure that its unanimous decision, as set out in resolution 799 (1992), is respected.

19. Having said that, I wish to point out that developments such as those that are the subject of the present report underscore the need to achieve a comprehensive, just and lasting peace in the Middle East. This objective has long been and will continue to be an important focus of United Nations efforts. The ongoing volatility of the situation in the occupied territories remains a matter of deep concern, and makes it all the more imperative that the international community should spare no effort in pursuit of a settlement. For my part, I remain committed to do everything possible to help in this endeavour.

Notes

1/ United Nations Treaty Series, vol. 75, No. 973.

2/ General Assembly resolution 217 A (III).